

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.200 OF 2017

Daniyal Ramchandra Bhandare and Ors. Petitioners

Versus

Rajendra Vasantrya Ghatage and Ors. Respondent

Mr. Murlidhar L. Patil for the Petitioners.

Mr. Pradeep D. Dalvi for Respondent Nos.1 to 10.

Mr. Manoj A. Patil for Respondent Nos.11 to 121.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 5TH MARCH 2018.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Murlidhar Patil, learned counsel for the Petitioners, Mr. Pradeep Dalvi, learned counsel for Respondent Nos.1 to 10, and Mr. Manoj Patil, learned counsel for Respondent Nos.11 to 121.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 17th December 2016 passed by the District Judge-1, Ichalkaranji, thereby allowing Miscellaneous Civil Appeal No.33 of 2016, which was preferred by the present Respondent Nos.1 to 10, challenging the order dated 8th January 2016 passed by the Civil Judge, Junior Division, Ichalkaranji, below "Exhibit-5" in Regular Civil Suit No.270 of 2013.

3. The present Petitioners are the Original Defendants; whereas, Respondent Nos.1 to 10 are the Original Plaintiffs. Respondent Nos.1 to 10 had filed above-said Suit simplicitor for injunction, restraining the Petitioners from causing obstruction to their offering prayers and worship in the 'Church', as per their faith. It was submitted that, the Respondents were since beginning offering their prayers and performing the religious rights as per "Blue Book"; whereas, after unification of the 'Church', they are restrained from offering the prayers as per "Blue Book" and, therefore, the Petitioners herein be restrained from causing obstruction to their offering of prayers as per the "Blue Book" and exclusive time be allotted to the Respondents for offering such prayers.

4. Along with the Suit, Respondent Nos.1 to 10 had also filed an application for interim injunction. The Trial Court has, after a detailed order passed below it, rejected the said application; however, when the said order was challenged by the Respondents before the Appellate Court, Appellate Court has set aside the said order and allowed the Appeal.

5. While challenging this order of the Appellate Court, learned counsel for the Petitioners has taken this Court through the earlier litigation to point out that, previously also, such relief was claimed and it came to be rejected and, therefore, according to him, the Trial Court has rightly rejected the said relief. However, the Appellate Court has

unnecessarily and illegally interfered in the discretion exercised by the Trial Court and set aside the said order.

6. Per contra, learned counsel for Respondent Nos.1 to 10 and Respondent Nos.11 to 121 had supported the impugned order passed by the Appellate Court by submitting that, 'right to worship', according to one's religion and faith, is an independent religious right, which is protected under the Constitution, and the Appellate Court has rightly held that, mere unification of the 'Church' does not and cannot take away that right.

7. Having considered these submissions advanced by learned counsel for the parties, it has to be stated that, there cannot be any two opinions that the 'right to worship', according to one's religion and faith, is an independent right provided by the Constitution. It is a fundamental right and hence, mere unification of the 'Church' cannot take away that right, but, at the same time, it is necessary for Respondent Nos.1 to 10-Original Plaintiffs to prove that, they were exercising this right and that right was illegally or unlawfully obstructed by the Petitioners herein. On this aspect, however, there is absolutely no evidence on record, as observed by the Trial Court.

8. Conversely, the earlier litigation clearly goes to show that, such right was expressly rejected. It is pertinent to note that, one Rcy. S.S.

Mane had filed Regular Civil Suit No.85 of 1986 against the present Petitioners, seeking the same relief of injunction, restraining the Petitioners from interfering with their 'right to worship' in the disputed 'Church' on every Sunday, between 10:30 am to 12:30 am. After the hearing was conducted in the said Suit, it came to be dismissed on merits and Appeal No.15 of 2006 preferred against the said Judgment also came to be dismissed and it was clearly held that, there cannot be a separate time for offering separate prayers for each group.

9. In Second Appeal No.39 of 2008, the Appellants had made a statement before this Court that, they would apply to the “United Church of Northern India Trust Association” for permission to hold exclusive prayers and hence, they would like to withdraw the Second Appeal. Accordingly, the Second Appeal was withdrawn and whatever interim order was granted, allowing the Respondents to offer prayers in the 'Church' on every Sunday, between 6:00 pm to 8:00 pm, till the disposal of the Appeal, was vacated.

10. Thus, the backdrop of the earlier litigation clearly goes to show that, though an attempt was made to contend that, the 'followers' of the “Blue Book” are entitled to offer separate prayers and exclusive time be allotted to them for doing so, the said prayer was rejected and as a result, the said 'followers' had even withdrawn the Second Appeal, stating that, they would seek requisite permission to hold exclusive prayers from

'United Church of Northern India Trust Association'.

11. Now, admittedly, no evidence is produced on record to show that such permission is obtained from the 'United Church of Northern India Trust Association' for holding exclusive prayers.

12. In such situation, it follows that, neither there is evidence to show that till June, 2013, when the cause of action is alleged to have occurred, Respondent Nos.1 to 10 or the 'followers' of "Blue Book" were offering their prayers in the 'Church' in the exclusive time allotted to them; nor there is evidence to show that, they had obtained such permission from 'United Church of Northern India Trust Association' for allotting them the time to offer exclusive prayers, as they had undertaken to do so. Hence, the Trial Court has, on the basis of the material produced before it, rightly held that, till Respondent Nos.1 to 10 establish their 'right' to offer such prayers in the exclusive time slot, to be allotted to them, the relief of interim injunction, as claimed by them, cannot be granted.

13. The discretion exercised by the Trial Court was on the basis of the material placed before it, which was disturbed by the Appellate Court unnecessarily and without any foundation. Therefore, the view taken by the Trial Court being based on the material produced before this Court and also being a just, legal, possible and most probable view of the matter, as held by the Apex Court in the case of *Wander Ltd. & Anr. vs. Antox India P. Ltd., 1990 (supp.) SCC 727*, the Appellate Court should

not have disturbed that view or set it aside. Even the reasoning given by the Appellate Court cannot be called as legal and proper, considering the observations made in paragraph No.21 of its Judgment, saying that, the order passed by this Court in Appeal No.1211 of 1998, arising out of Company Appeal No.3 of 1997, may require reconsideration / interpretation. The impugned order, therefore, passed by the Appellate Court, cannot be sustained in law.

14. Hence, the Writ Petition is allowed. The impugned order passed by the Appellate Court is quashed and set aside. As a result, the order passed by the Trial Court, rejecting the application filed by Respondent Nos.1 to 10 for interim injunction at “Exhibit-5” is restored.

15. Needless to clarify that, whatever observations made here-in-above are only for the purpose of deciding this Writ Petition and they will not come in the way of the Trial Court in deciding the Suit.

16. Rule is made absolute in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]